

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Laurence J. Cull)	
)	Examiner: Leslie R. Deak
Serial No.: 10/674,094)	
)	Group No.: 3761
Filed: September 29, 2003)	
)	Docket No: P03231
Title: Peristaltic Pump Fitment for Attachment)	(6639-000048/US)
To an Aspirant Collection Bag)	

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

Reply to Examiner's Answer

This is Reply is filed in response to the Examiner's Answer dated 29 October 2007.

The Examiner relies heavily on the assertion that the term fluid may include both air and liquid and thus the prior art Worrich patent does not teach away from the present claims. While fluid in some general sense may encompass both air and liquid, in the present case in both the ophthalmic environment to which the claims are directed and to the Worrich patent fluid does not included both air and liquid. As pointed out in Appellant's Brief, Worrich is only directed to liquid venting, which is synonymous with fluid venting in the present case. Appellant would also refer to US Patent 6,083,195, where the terms air venting and fluid venting are defined in terms of Ophthalmology. From the '195 patent and the Worrich patent, it is clear that air venting is not the same as liquid or fluid venting. Worrich only teaches venting with liquid and in the context of

Ophthalmology this means fluid venting and not air venting. Therefore, Appellant's prior argument that those skilled in the art reading Wortrich would not be concerned with fitments in the waste bag still stand valid.

The Examiner has essentially ignored Appellant's argument about the effectiveness of the functional language about what the claimed notch does. Instead the Examiner glosses over this issue by stating that the Examiner considers the language a statement of intended use. However, as Appellant pointed out in the prior Brief, functional language is proper in drafting claims and can be used to distinguish the claims over the prior art. If the functional language of the presently appealed claims is given proper weight the appealed claims distinguish the present invention from the prior art.

The last argument made by the Examiner is similar to the first in that because fluid can, in general, encompass both air and liquid, that the combination of Wortrich and Sato is proper. As already pointed out the base premise of this argument is wrong. Fluid, in the context of the present invention, does not include both liquid venting and air venting. Therefore, Appellant's original argument that the combination of Wortrich and Sato in improper still stands valid.

Respectfully submitted,



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